UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1992/20
3 June 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Application of international standards concerning the human rights of detained juveniles

Report prepared by the Special Rapporteur,
Mrs. Mary Concepción Bautista, pursuant to
Sub-Commission resolution 1991/16

CONTENTS

	Paragraphs	Page
Introduction	1 - 14	1
I. OVERVIEW OF THE PERTINENT INTERNATIONAL STANDARDS	15 - 22	4
II. SUCCESSFUL EFFORTS TO IMPLEMENT INTERNATIONAL STANDARDS	23 - 66	5
A. Minimum age of criminal responsibility	23 - 31	5
B. Length of detention before and pending trial	32 - 41	6
C. Least possible use of institutionalization	42 - 55	8

GE.92-12494/4574B

CONTENTS (continued)

		Paragraphs	Page
D.	Institutional treatment	56 - 60	12
E.	Separation of adults and juveniles in penal institutions	61 - 66	13
III.	OBSERVATIONS MADE ON THE BASIS OF ANALYSIS OF THE REPLIES RECEIVED	67 - 87	13
A.	Minimum age of criminal responsibility	67 - 71	13
B.	Length of detention before and pending trial	72 - 77	15
C.	Least possible use of institutionalization	78 - 81	16
D.	Institutional treatment	82 - 85	17
E.	Separation of adults and juveniles in penal institutions	86 - 87	18
IV.	RECOMMENDATIONS CONCERNING MEASURES THAT SHOULD BE TAKEN BY STATES AND THE INTERNATIONAL COMMUNITY TO INCREASE EFFECTIVE RECOGNITION AND PROTECTION OF THE RIGHTS OF DETAINED JUVENILES	88 - 99	18

Introduction

1. By its resolution 1985/19 of 29 August 1985, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to invite Governments, United Nations organs, specialized agencies, intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations to submit information concerning the incarceration of children under the age of 18 with adult prisoners, and to solicit their views on the ways and means of preventing this practice. It futher requested the Secretary-General to compile the information received and to submit it in a report to the Sub-Commission at its thirty-ninth session.

2. In accordance with this resolution, the Secretary-General, on 10 July 1986, addressed appropriate inquiries to Governments, United Nations organs and organizations as mentioned above. The substantive replies that were received were submitted for the consideration of the Sub-Commission at its thirty-ninth session (E/CN.4/Sub.2/1987/30 and Add.1). By its resolution 1989/31 of 1 September 1989, entitled "Application of international standards concerning the human rights of detained juveniles", the Sub-Commission, considering that document E/CN.4/Sub.2/1987/30 had not yet been discussed and that further information had been made available to the Secretary-General on the question of children deprived of their liberty, requested the Secretary-General to update that document for consideration by the Sub-Commission at its forty-second session. It also decided to appoint Mrs. Mary Concepción Bautista to prepare a report, without financial implications, on the application of international standards concerning the human rights of detained juveniles, in particular the separation of juvenile and adult offenders in penal institutions, detention pending trial, least possible use of institutionalization, and the objectives of institutional treatment.

3. In accordance with resolution 1989/31, the Secretary-General, on 7 March 1990, addressed appropriate inquiries to Governments, specialized agencies and non-governmental organizations and sent out a questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty. The replies received were submitted to the Sub-Commission at its forty-second session in 1990 (E/CN.4/1990/25 and Add.1)

4. In its resolution 1990/21 of 30 August 1991, the Sub-Commission, noting that the replies had not been incorporated in the preliminary report of the Special Rapporteur owing to a lack of sufficient time and convinced that additional information should be sought from Governments and non-governmental organizations, requested the Secretary-General to give the questionnaire the widest possible circulation amongst Governments, specialized agencies and non-governmental organizations so that the replies could be included in a report to its forty-third session. It also decided to extend the mandate of the Special Rapporteur until its forty-third session.

5. Consequently, notes verbales and letters were sent on 7 December 1990 to Governments, specialized agencies and non-governmental organizations

soliciting their views on the subject of international standards concerning the human rights of juveniles deprived of their liberty. The Special Rapporteur submitted her report (E/CN.4/Sub.2/1991/24) to the Sub-Commission at its forty-third session. The Special Rapporteur also drew the attention of the Sub-Commission to a document she had received from Defence for Children International (E/CN.4/Sub.2/1991/50).

6. Having considered the report submitted by the Special Rapporteur, the Sub-Commission adopted resolution 1991/16 of 28 August 1991 in which it urged all Governments that had not yet done so to review their legislation and practices with a view to ensuring compatibility with recently adopted pertinent international standards concerning the rights of children and juvenile justice.

7. In the same resolution, the Sub-Commission requested the Special Rapporteur to submit to the Sub-Commission, at its forty-fourth session, an updated report containing further information concerning successful efforts to implement international standards, observations relating to practices that were not compatible with relevant international standards, and recommendations concerning measures that should be taken by States and the international community to increase effective recognition and protection of the rights of detained juveniles. The Sub-Commission also requested the Special Rapporteur, in the preparation of the updated report, to take into account any additional information and observations she received from States, competent intergovernmental bodies and non-governmental organizations.

8. By 15 May 1992, replies were received from the following Governments: Canada, Ecuador, Netherlands, Portugal, Rwanda.

9. In addition to the above-mentioned information, the International Association of Juvenile and Family Court Magistrates provided information on the situation in Belgium, Brazil, Italy, Switzerland and Venezuela.

10. The present report is based on the analysis of the information received. As in her previous report, the Special Rapporteur also took into account other material available to her, especially the relevant documentation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August-7 September 1990).

11. Concerning the question of implementing the international standards, owing to a lack of information, the Special Rapporteur is not in the position to evaluate the effects of the two instruments, the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly at its forty-fifth session, in resolutions 45/112 and 45/113 of 14 December 1990, respectively.

12. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the General Assembly in its resolution 40/33 of 29 November 1985, have, however, substantially influenced the juvenile justice systems of several countries, which have changed

accordingly. The adoption of the Convention on the Rights of the Child by the General Assembly in its resolution 44/25 of 20 November 1989 further contributed to attracting the attention of mass-media and public opinion to the needs of children.

13. In light of the requests of the Sub-Commission contained in resolution 1991/16, in particular paragraph 2, the Special Rapporteur analysed the information received, bearing in mind some of the most important issues such as the minimum age of criminal responsibility, the length of detention before and pending trial, the least possible use of institutionalization, institutional treatment and the separation of adults and juveniles in penal institutions. Special attention was devoted to the existence of status offences, detention facilities for non-convicted juveniles, non-custodial measures, detention as a disposition of last resort and for the minimum necessary period, the existence of specialized juvenile courts and of rehabilitation programmes.

14. Finally, it should be recalled that the Sub-Commission, in its resolution 1991/16, also requested the Secretary-General to explore the feasibility of organizing a meeting of experts under the auspices of the Centre for Human Rights, the United Nations Children's Fund and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs on the application of international standards concerning the human rights of detained juveniles, in order that the results of the meeting may be used by the Special Rapporteur in the preparation of the updated report. On the question of the feasibility of organizing such a meeting of experts, observations and recommendations received will be submitted in an addendum to the present report.

I. OVERVIEW OF THE PERTINENT INTERNATIONAL STANDARDS

15. The International Covenant on Civil and Political Rights, adopted by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966, contains the basic principles on the right to liberty and respect for the inherent dignity of the human person while deprived of his liberty.

16. The Standard Minimum Rules for the Treatment of Prisoners ("Standard Minimum Rules"), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957, set out the principles and practices to be applied without discrimination on the ground of race, colour, sex, language, religion, political opinions, national or social origin, property, birth or other status.

17. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") aim at promoting the welfare of juveniles to the greatest possible extent through the commitment of States to further the well-being of juveniles and their families and to develop conditions that will ensure meaningful lives in the community for juveniles. Juvenile justice should be an integral part of the national development process of each country.

18. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by the General Assembly in its resolution 43/173 of 9 December 1988, elaborates on the protection of the human rights of all persons under any form of detention or imprisonment.

19. The Convention on the Rights of the Child reaffirms the fact that because of their vulnerability, children need special care and protection.

20. The United Nations Standard Minimum rules for Non-custodial Measures ("The Tokyo Rules"), which were adopted by the General Assembly in its resolution 45/110 of 14 December 1990, provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Rules are intended to promote greater community involvement in the management of criminal justice and to promote among offenders a sense of responsibility towards society.

21. The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") consider the prevention of juvenile delinquency an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation, young persons can develop non-criminogenic attitudes.

22. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty were adopted with the intention of establishing minimum standards for the protection of juveniles deprived of their liberty. The juvenile justice system should uphold the rights and promote the physical and mental well-being of juveniles.

II. SUCCESSFUL EFFORTS TO IMPLEMENT INTERNATIONAL STANDARDS

A. Minimum age of criminal responsibility

23. According to information received from the Governments of Belgium, Venezuela and Brazil the minimum age of criminal responsibility is 18 years. This is also the age from which a person can be tried like an adult. In Belgium, however, if the juvenile court esteems that the measures foreseen by legislation on juvenile delinquency are insufficient, it can hand over a minor of age 16 to the public prosecutor, to end the proceedings before a criminal court for adults, which tries him or her following the criminal common law. In Venezuela the Minors' Protection Act provides that the juvenile judge may continue to hear the case, even when the juvenile offender has reached the age of 18, and may order the juvenile to undergo rehabilitation in special facilities for young adults. In Brazil if a minor commits a crime between the ages of 12 and 18, he or she is presented to the juvenile court, which will apply a "socio-educative measure", foreseen by the law supporting the Statut de l'Enfant.

24. In Canada the age of criminal legal responsibility is 12 years. However, a juvenile may be tried as an adult from the age of 14 if the offence is grave and the character of the juvenile is such that non-punitive corrective treatment is not adequate. It is the youth court which decides whether these conditions exist and whether the juvenile should be transferred to the adult court. This decision is subject to review by a superior court, whose decision may itself be reviewed by a provincial court of appeal.

25. In Ecuador, the age of criminal responsibility and the age from which a person can be tried as an adult is 18 years. The Juvenile Code stipulates that cases of juveniles dealt with and decided by the Juvenile Legal Service shall be treated as human problems, not as litigious matters; moral, social and biological factors shall take precedence over any other consideration. The Juvenile Code applies to any human being, from before birth until the age of 18. All acts committed by juveniles in violation of criminal law are characterized as "juvenile offences", whatever their seriousness, and are tried by the Juvenile Court.

26. In Italy the age of criminal legal responsibility is 14 years but a juvenile cannot be tried as an adult until the age of majority, which is 18 years. Below the age of 14, if the offender is considered by the youth court as "socially dangerous", the court can order "measures of security" or place him or her in a "rehabilitation centre or on probation".

27. In the Netherlands, a juvenile, between the ages of 12 and 16, can be prosecuted for violating criminal law, but only the procedures and measures governing juvenile delinquency are applied. In principle, juvenile justice is applied in respect of persons aged 16 to 18, but if the seriousness of the offence and the character of the offender so warrant, the court may apply adult justice. In principle, adult justice is applied in respect of young persons aged 18 to 21, but if the nature of the offence and the character of the offender so warrant, the court may apply provisions of the juvenile justice system. No one below the age of 12, can be prosecuted for an offence committed.

28. In Portugal the age of criminal legal responsibility is 16 years. The age from which a person can be tried as an adult is 21 years. Below the age of 16, the juvenile court applies to juvenile delinquents the measures of protection and of education provided in the decree-law establishing the "Organisation tutélaire des mineurs" (O.T.M.). These measures can also be applied to juveniles aged 16 to 18, depending upon the seriousness of the offence (punishable with a sentence of less than two years) and according to the personality of the offender. Otherwise, special provisions for "young adults" (16-21 years of age) are applied, which include provisions for semi-detention.

29. In Rwanda the age of criminal legal responsibility is 14 years and one day. However, a person cannot be tried like an adult until he or she reaches the age of 18.

30. In Switzerland children under the age of 7 years are not responsible for their crimes. The law distinguishes between children between the ages of 7 and 15 and adolescents between the ages of 15 and 18. Both groups have a "relative irresponsibility" (irresponsabilité relative).

Status offences

31. This notion does not exist in countries examined, except in Ecuador: "Under the Juvenile Code, wrongful conduct by a juvenile is any conduct which is not a crime or an offence, but which entails anti-social behaviour and therefore requires action by the State with a view to the juvenile's rehabilitation." Measures under the Code are "preventive and corrective in nature, not punitive". The Minors' Protection Act of Venezuela states that "minors are protected throughout the period of their growth".

B. Length of detention before and pending trial

32. Detention pending trial of juveniles does not exist in Belgium and Ecuador. In Ecuador "juveniles engaging in wrongful conduct are detained in special rehabilitation centres or 'shelters' in accordance with an order issued by the President of the court to whose territorial jurisdiction the juveniles are subject". In Canada the law permits the detention of juveniles pending trial but the response of the country does not indicate either the maximum or the minimum period of detention. Pre-trial detention of a juvenile by court order is permitted, among other circumstances, when there is no responsible person willing and able to exercise care and control over him and with whom the young person is willing to stay; in that case, a judge may issue a warrant for the juvenile's arrest. In Brazil detention pending trial exists for a maximum period of 45 days. It is utilized "in the last resort".

33. In Italy, detention pending trial may be ordered by the judge if the offence is punishable by a prison sentence of nine years or more or if one of the following offences is committed by the juvenile: rape, aggravated larceny, robbery, extortion, illegal possession of weapons, offences under the narcotics law. In 1990, 645 juveniles were imprisoned, 69 of them for more than 90 days, 204 from 16 to 30 days and 154 from 1 to 15 days. The maximum period of detention is not indicated in the reply.

34. In the Netherlands juveniles between the ages of 12 and 18 may be placed in detention pending trial by the Juvenile Court at the demand of the public prosecutor. The maximum period of pre-trial detention is two months. However, if the trial begins during the period of detention, the detention may in principle continue until sentence is passed, possibly beyond two months. The average duration of detention is 47 days.

35. In Portugal pre-trial detention for juveniles under the age of 16 does not exist. For juveniles between the ages of 16 and 21 under the jurisdiction of the "régime juridique tutélaire de protection et éducation", pre-trial detention cannot be utilized. Pre-trial detention is possible if the offence committed is one which renders the offender liable to a prison sentence of more than three years and if there is a risk that the delinquent may escape or destroy material evidence. It is used only in the last resort. There is no indication in the reply of the duration of pre-trial detention.

36. In Rwanda detention pending trial is possible, under the same circumstances as for adults: offences punishable by a prison sentence of at least six months; or risk of escape by the juvenile; or "if in view of serious and exceptional circumstances, pre-trial detention is demanded in the public interest and security". The duration is not indicated.

37. In Switzerland pre-trial detention is possible if there is a "danger of escape, danger of collusion, danger of repetition". The duration and the age from which pre-trial detention is possible are not indicated.

38. The term "deprivation of liberty" is used in Venezuela rather than "detention". As a temporary measure, a juvenile may be placed in a closed facility for diagnosis and observation. The law permits the police to detain a juvenile without a court order if the juvenile is in any of the situations which qualify him as a "minor in an irregular situation" (abandoned, at risk, having committed an offence). The juvenile must be transferred to a facility belonging to the National Minors' Institute (INAM). The juvenile judge and the juvenile prosecutor must be notified within eight days. Even if the juvenile judge is convinced that a juvenile is an offender or at risk, he has to order a diagnosis in an open facility because of the lack of space in the National Minors' Institute. Detention pending trial may last no more than 60 days, but since reports by INAM observation centres are never completed on time, custody lasts longer. The judge must decide within a maximum period of 20 working days from the time when the results of the reports are received.

Special detention facilities for non-convicted juveniles

39. Detention pending trial does not exist in Belgium and Ecuador. In Brazil and Venezuela the law provides for juveniles to be placed in detention centres separate from those of adults. In Venezuela the police have special facilities exclusively for juveniles. In Canada juveniles pending trial are held in special centres. However, a juvenile may be placed in an adult detention centre if the judge is satisfied that: (i) the juvenile cannot, for safety reasons, be detained in a place of detention for young persons; or (ii) no place of detention for juveniles is readily available. In Canada "the police are not required to have special facilities exclusively for juveniles,

but a young person who is detained by the police shall be transferred to a place of temporary detention as soon as is reasonably practicable, at the first reasonable opportunity after the appearance of the young person before a judge".

40. In Italy the law provides for juveniles to be separated from adults and detained in a separate place of detention. Convicted and non-convicted juveniles are not always separated. Moreover, these places of detention also accommodate persons of the age of majority whose sentences began when they were juveniles. The centres for female juveniles are insufficient in number and for this reason they are sometimes placed in detention centres for female adults. Because of the lack of detention facilities, juveniles are sometimes placed in centres for adults.

41. In the Netherlands non-convicted juveniles are placed in centres for juvenile delinquents or assigned to residences. In Portugal persons between the ages of 16 and 25 are separated from older persons. In Rwanda non-convicted juveniles are held apart from convicted juveniles and from adults. They are placed in separate places of detention. In Switzerland non-convicted juveniles are held in separate places of detention from those of convicted juveniles and those of adults.

C. Least possible use of institutionalization

1. Non-custodial measures

42. In Belgium, the measures enumerated in rule 18.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and applied in the country are:

(a) Care, guidance and supervision orders;

(b) Financial penalties, compensation and restitution;

(c) Orders concerning foster care, live-in communities or other educational settings.

Moreover, the following measures are applied:

(d) Placing the offender at the disposition of the Government (without closed detention);

(e) Mediation;

(f) Open placement in a detention facility for a period of 15 days.

Only the judicial authority is empowered to take such measures.

43. In Brazil, all the measures enumerated in rule 18.1 of the Standard Minimum Rules are applied. To these are added reprimand and the obligation to attend school.

44. In Canada, the measures enumerated in rule 18.1 of the Standard Minimum Rules and applied in the country are:

(a) Probation, in 47.4 per cent of cases;

(b) Placement in an open detention facility (13.8 per cent);

(c) Financial penalties (13 per cent);

(d) Secure custody (11.9 per cent);

(e) Community Service Order (7.7 per cent);

(f) Absolute discharge (3.8 per cent);

(g) Compensation (0.58 per cent);

(h) Restitution (0.32 per cent);

(i) Other (1.3 per cent).

The measures listed above are taken by the judicial authority. Custodial measures are applied in about one quarter of the cases.

45. In Ecuador, the following disposition measures are applicable to juvenile offenders:

(a) Care, guidance and supervision orders;

(b) Orders concerning foster care, live-in communities or other educational settings;

(c) Commitment to an open detention facility.

Only the juvenile court is empowered to take the measures listed above. There are no statistics on the percentage of cases in which non-custodial or custodial measures are applied to juvenile offenders because juveniles may not be placed in institutions.

46. In Italy, all the measures enumerated in rule 18.1 of the Standard Minimum Rules are expressed or implied by the law. Moreover, when a juvenile is on trial, the court, by a "motion to stay", may adjourn the trial and put the juvenile on probation from one to three years. The juvenile participates in a socio-educative project designed by social workers in consultation with the parents. Moreover, the juvenile undertakes to repair the damage that he has done and to present his apologies to the victim. When the period of probation has ended, the judge may decide to acquit the juvenile. But if the juvenile did not satisfy the conditions of his probation, the judge may decide to go to trial and sentence him.

47. In the Netherlands, two different programmes of non-custodial measures have been implemented since 1983:

(a) Community services which are based on the accomplishment of non-paid activities of general interest. Such activities have an educative goal, allowing minors to be useful to the society in which they live. If possible, these activities should be related to the crime committed;

(b) The educational projects involve juveniles in occupational training programmes, educational courses and the like. The final goal of such programmes is to allow the juvenile to modify his/her behaviour, to gain knowledge and to prepare for his/her reintegration into society. In order to obtain these results, the juvenile must consent to participate and the programmes are based on the personality of the juvenile. The shortest programmes have a duration of 6 to 12 sessions of one to two hours and the longest last five days a week for three months. In the latter case, they substitute for the custodial measure.

48. In total, these measures concerned 25 per cent of young offenders in 1988 (5 per cent in 1983). Other applicable measures are: probation (5 per cent), educational settings (4 per cent), financial penalties (44 per cent), and closed detention (22 per cent). The judicial authorities in the Netherlands base their decisions on the principle that juvenile justice must be educational in character; detention is generally regarded as a last resort.

49. Besides criminal law there is also ample scope under civil law for Children's Judges to respond to developments concerning young people. For example, a family supervision order may be imposed if a young person in "moral and physical danger". A supervision order is made by a Children's Judge and a family supervisor (a social worker) is appointed to implement it. The aim of such a measure is to keep the young person in the family home and the family supervisor's job is to help parents and child in the family situation. The child may also be taken into care in the framework of a supervision order, in principle for up to one year, although this may be extended by a Children's Judge. If the young person concerned is placed in an institution for young offenders the placement may involve deprivation of liberty.

50. Possible non-custodial measures in Portugal include:

(a) Admonition;

(b) Parental care or guardianship;

(c) Imposition of certain behaviour or duties;

(d) Educational supervision;

(e) Foster care, live-in communities;

(f) Compulsory participation in group counselling;

(g) Placement in an educational or training institution.

51. Non-custodial measures available in Rwanda include:

(a) Financial penalties, compensation and restitution;

(b) Placement in open centres for re-education and production.

52. In Switzerland a broad range of non-custodial measures exist:

(a) Care, guidance and supervision orders;

(b) Community service orders;

(c) Financial penalties, compensation and restitution;

(d) Participation in group counselling and similar activities;

(e) Orders concerning foster care and live-in communities;

(f) Commitment to an open or closed detention facility.

53. In Venezuela, non-custodial measures implemented include:

(a) Placement with parents, guardians, custodians or responsible relatives, with proper group attention;

(b) Probation;

(c) Placement in a family;

(d) Care in a rehabilitation centre;

(e) Care in a treatment centre.

Only 10 per cent of juveniles below the age of 18 have the possibility for rehabilitation treatment because of the lack of space.

2. Detention as a disposition of last resort and for the minimum necessary period

54. In Belgium 70 per cent of the measures taken are non-custodial measures. This figure can vary according to the district. In Brazil, in the great majority of cases, socio-educational measures are applied without having recourse to custodial measures. The Brazilian law establishes that custodial measures should not be ordered if alternative measures are feasible. In the province of Campo Grande only 10 juveniles out of 600 were deprived of their liberty after trial. In Venezuela there is no placement in penal institutions for juveniles below the age of 18.

55. In Canada recourse to custodial measures is taken in regard to 25 per cent of tried juveniles. Juveniles are not placed in penitentiaries in Ecuador. They can be placed only in open detention facilities. In Rwanda, two thirds of convicted juveniles are placed in open detention facilities while in Switzerland and in the Netherlands, the percentage is 90 per cent

and 78 per cent respectively. Under the Aliens Act in the Netherlands, aliens may be detained for up to one month. Aliens aged between 12 and 16 are usually detained in an institution for young offenders unless their parents, who have also been detained, insist on their remaining with them. In such cases the entire family is held at a police station or in a remand centre.

D. Institutional treatment

1. Existence of specialized juvenile courts

56. In Belgium and Rwanda there are no specialized courts for juveniles. In Ecuador, Italy, Portugal, Switzerland and Venezuela specialized juvenile courts exist. The report of Venezuela indicated that the number of juvenile courts (44 in total) is not sufficient. Under Dutch law there are no special juvenile courts but there are Children's Judges. They are attached to the ordinary district courts and are responsible for hearing all cases involving juveniles. They are also ordinary members of the Full Bench Division of the district courts responsible for criminal cases. Their number is considered sufficient.

2. Existence of rehabilitation programmes

57. In Belgium the rehabilitation programmes consist of basic apprenticeship and sports. In Ecuador the educational and rehabilitation programmes provided in special institutions are designed for supervised recreation and the use of the juveniles' free time for vocational and technical training. Pedagogical, recreational and psychological programmes and, if necessary, socio-familial assistance, exist in Brazil. In Italy these programmes consist of primary and secondary educational courses, occupational training and leisure activities.

58. According to the law of the Netherlands, under the provision of the Child and Youth Care Act, youth institutions are obliged to offer the juveniles they house a daily programme including educational activities, employment training or other kinds of training. Young people detained in institutions for young offenders receive counselling to prevent recidivism and to help improve their chances on their return to society. The counselling continues for some time after they have left the institution.

59. In Portugal, juveniles below the age of 16 attend school and participate in cultural activities in the place where the rehabilitation centres are located. Individual re-education programmes and occupational training are available for juveniles from 16 to 25 years of age held in a semi-open or closed detention facility.

60. In Rwanda, rehabilitation programmes consist of literacy teaching and English, French and Swahili language courses, as well as vocational training. A moral training programme is also available. No educational or rehabilitative programmes exist in Venezuela for juvenile offenders over the age of 18 (under the age of 18 juveniles cannot be placed in penal institutions); such facilities have been in the planning stage since 1980, but they have not yet been set up. However, juvenile offenders over the age of 18 are referred to adult handicraft centres, where they are kept separate from adults.

E. Separation of adults and juveniles in penal institutions

61. All the national legislation of the countries which replied expressly prohibit the detention of juvenile offenders together with adults.

62. The Young Offenders Act in Canadian legislation expressly recognizes the principle that juveniles deprived of their liberty should be kept separate from adults. A young person over the age of 14 years charged with first- or second-degree murder who is successfully transferred to adult court and convicted of the offence faces a life sentence, to be served in an adult facility. This is the only situation in which juvenile offenders are brought together with adults, but it is not necessarily considered "beneficial for the juveniles concerned". Canadian law further establishes that a young person shall be held separate and apart from any adult who is held in custody, unless a youth court judge is satisfied that the young person cannot, for his own safety or the safety of others, be detained in a place of detention for young persons or if no place of detention for young persons is available within a reasonable distance. However, a young person so restrained shall be transferred to a place of temporary detention as soon as reasonably practicable.

63. In the Netherlands, treatment orders for young people are very occasionally executed in institutions for adults if, for example, no institution for young people is adequately equipped to deal with the young person in question. This occurs an average of once or twice a year.

64. In Italy, separation of adults and juveniles is not always possible because of lack of space in institutions for juvenile offenders. Where separation is not possible, juveniles are placed in a distinct area and are detained for the shortest period possible.

65. In Rwanda, on rare occasions juveniles may be put together with adults while the authorities search for a place in a juvenile facility.

66. "Mixed" or "multi-purpose" detention facilities do not exist in any judiciary system of the responding countries.

III. OBSERVATIONS MADE ON THE BASIS OF ANALYSIS OF THE REPLIES RECEIVED

A. Minimum age of criminal responsibility

67. Rule 4.1 of The Beijing Rules establishes that "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." Article 40.3 (a) of the Convention on the Rights of the Child states "The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law".

68. As far as juveniles are concerned, all replying countries affirm that if judicial action is undertaken, it should have a re-educative rather than a punitive character. Their legislation concerning juvenile delinquency

exhibits their wish to rehabilitate, to protect and to prepare juveniles for reintegration into society. Specific legislation on juvenile delinquency exists in all replying countries. Certain countries (Brazil, Canada, the Netherlands and Switzerland) set the minimum age of criminal responsibility from 7 to 12 years of age. In the Netherlands, no one under 12 years of age can be prosecuted for an offence and only the special provisions governing juveniles may be applied against a person aged 12 or over but under 16 at the time an offence was committed. In all the countries, with the exception of Canada and the Netherlands, a person may be tried as an adult only from the age of 18. In Canada and the Netherlands, a juvenile is tried as an adult only in exceptional circumstances: if the offence is serious and the character of the juvenile is such that measures under the legislation for juvenile delinquency are considered inadequate. By affirming that a person cannot be tried like an adult until the age of 18, except in special cases, the national legislation follows the spirit of the international rules which tend to consider the age of 18 years as the age of majority under criminal law. Rule 11 (a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that "A juvenile is every person under the age of 18." Article 1 of the Convention on the Rights of the Child states that "A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".

69. The Special Rapporteur observes that the minimum age of criminal responsibility differs widely because the psychological development of an adolescent varies depending upon his or her character, life experiences and culture. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility becomes meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities.

The existence of status offences

70. Paragraph 56 of The Riyadh Guidelines establishes that "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence or penalized if committed by a young person." Rule 3.1 of The Beijing Rules establishes that "The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult." This rule is intended to cover "status offences" prescribed in some national legal systems whereby the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for instance, truancy, school and family disobedience, public drunkenness, etc.).

71. With the exception of Ecuador, status offences do not exist in state legislations, thus following the concept articulated in The Riyadh Guidelines. As regards Ecuador, the reply provided by the Government gives no exact definition of status offences nor does it indicate whether juveniles demonstrating anti-social behaviour are treated following the example of those who have committed an offence under criminal law.

B. Length of detention before and pending trial

72. Rule 13.1 of The Beijing Rules states that "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time." The Convention on the Rights of the Child establishes in article 37 (b) that "... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." In Belgium and Ecuador, pre-trial detention does not exist for juveniles. In Portugal, it does not exist for juveniles under the age of 16. Only two countries indicated the maximum period: 45 days in Brazil and two months in the Netherlands. In Brazil detention pending trial will not be applied if some other measure is feasible. Brazil was the only country to indicate that pre-trial detention is used as a measure of last resort. In Rwanda, pre-trial detention is possible if it is considered to be in the public interest and security. According to replying Governments, pre-trial detention is authorized only when the crime is punishable by imprisonment from six months to three years or when there is a risk that the delinquent may escape.

73. The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is, therefore, important to stress the need for alternative measures. By doing so, rules 13.1 and 13.2 of The Beijing Rules encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners and the International Convention on Civil and Political Rights. According to article 9 of this Convention, everyone has the right to liberty and security of person and, therefore, shall not be subjected to arbitrary arrest or detention. Article 9.3 deals with detention pending trial and says that it shall not be the general rule that persons awaiting trial shall be detained in custody. Article 9.4 entitles anyone who is deprived of his liberty by arrest or detention to take proceedings before a court to decide on the lawfulness of his detention. Paragraph 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides that:

> "Juveniles who are detained under arrest or awaiting trial ('untried') are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles."

Special detention facilities for non-convicted juveniles

74. In all the countries concerned, the law establishes that juveniles must be placed in institutions separate from those of adults. Only Rwanda and Switzerland specify that non-convicted juveniles are separated from convicted juveniles. In Italy, non-convicted juveniles are sometimes placed with convicted juveniles because of lack of space.

75. It should be emphasized that sometimes juveniles are not separated from adults because the number of juvenile detention centres is insufficient (Italy, Canada), or because the law permits some exceptions for reasons of security (Canada). Moveover, juveniles and young adults convicted while they were still juveniles may be kept together (Italy, Portugal).

76. The Special Rapporteur recalls that juveniles who have not been tried should be presumed innocent and should be separated not only from adult offenders but also from convicted juveniles in order to avoid turning deprivation of liberty under such circumstances into a "school of crime". The majority of the international instruments mentioned in this report contain provisions concerning the need to separate juveniles and adults in detention facilities.

77. The Special Rapporteur observes that the principle that non-convicted persons should be separated from convicted persons is not taken sufficiently into account. According to article 10.2 (a) of the International Covenant on Civil and Political Rights, "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons." The same principle is expressed by rule 8 (b) of the Standard Minimum Rules for the Treatment of Prisoners, by the principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and paragraph 17 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. The Special Rapporteur believes that the intention of the provisions concerning detention pending trial set out in various international instruments is to minimize the recourse to this measure and to limit it to the shortest period of time. The Special Rapporteur notes that several countries have not yet applied these provisions and that, consequently, it is necessary to reaffirm that non-convicted juveniles must be kept separate.

C. Least possible use of institutionalization

1. Non-custodial measures

78. Rule 18.1 of The Beijing Rules establishes a number of non-custodial measures, as does rule 8.2 of The Tokyo Rules. Article 40.4 of The Convention on the Rights of the Child provides that: "A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

79. The national legislation of the countries concerned makes provisions for a variety of non-custodial measures such as those mentioned above. Among the most common are: financial penalties, compensation and restitution; foster care or placement in an open rehabilitation centre; care, guidance and supervision orders. Community service orders that may be considered an alternative to imprisonment are used only in three countries: Belgium, Canada, and the Netherlands. The Special Rapporteur believes that it would be

necessary to ask countries to specify which non-custodial measures are considered as a substitute for placement in detention and which are measures concerning lesser offences which do not necessitate imprisonment.

2. Detention as a disposition of last resort and for the minimum necessary period

80. According to the replies received, 20 to 30 per cent of juvenile delinquents are in some way deprived of their liberty and held in special centres. Some countries do not specify the criteria upon which detention is based.

81. The use of institutionalization varies greatly from country to country: in Ecuador a juvenile is never placed in a closed detention centre, whereas in Italy, of the 439 juveniles convicted in 1990, only 134 were not deprived of their liberty.

D. Institutional treatment

1. Existence of specialized juvenile courts

82. The Beijing Rules provide in rule 2.3 that "Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice ..." This principle is also put forward in paragraph 52 of The Riyadh Guidelines and article 40.3 of the Convention on the Rights of the Child.

83. There are no specialized juvenile courts in two countries: Belgium and Rwanda. In the Netherlands, there are only children's judges.

2. Existence of rehabilitation programmes

84. In the countries concerned, detention in institutions implies the submission of the juvenile delinquent to educational programmes and vocational training. Some countries also include psychological assistance (the Netherlands, Brazil). In all these countries, the objective of detention appears to be rehabilitation rather than punishment. This complies with the principle established in rule 26.1 of The Beijing Rules: "The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society." This principle is also established in articles 40.1 and 40.4 of the Convention on the Rights of the Child. Rules 38 to 46 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty deal with the right of detained juveniles to education, vocational training and work.

85. Taking into account that educational and recreational programmes are not considered sufficient to solve the psychological problems of juveniles, which often take an anti-social expression, the Special Rapporteur notes that, on the basis of the information provided by the countries concerned, psychological assistance (psychological diagnosis, individual or group psychotherapy, character-building) does not appear to be as widely employed as it should be.

E. Separation of adults and juveniles in penal institutions

86. According to article 10.3 of the International Covenant on Civil and Political Rights, "Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status." Rule 8 (d) of the Standard Minimum Rules for the Treatment of Prisoners postulates that "Young prisoners shall be kept separate from adults." Rule 26.3 of The Beijing Rules stipulates that "Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults." Article 37 (c) of the Convention on the Rights of the Child postulates that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

87. In light of the above provisions, the Special Rapporteur notes with disappointment that there are still some exceptions to this measure of safeguard, mainly due to the lack of financial resources. The separation should be guaranteed during periods of custody, pre-trial detention and after conviction. Juveniles exposed to contact with adults could be not only exposed to a process of "criminal contamination", but they could be abused by adults in several ways.

IV. RECOMMENDATIONS CONCERNING MEASURES THAT SHOULD BE TAKEN BY STATES AND THE INTERNATIONAL COMMUNITY TO INCREASE EFFECTIVE RECOGNITION AND PROTECTION OF THE RIGHTS OF DETAINED JUVENILES

88. It is recommended that in order to respect the rights of juveniles and to establish a global policy for delinquency prevention, all Member States should review their legislation, if they have not done so, with the view to ensuring compatibility with all the existing international standards.

89. The Special Rapporteur suggests that United Nations bodies and intergovernmental and non-governmental organizations should coordinate their efforts to increase awareness of the question of juvenile justice and to identify the most urgent priorities of each country. Then, they should jointly cooperate with the concerned countries in order to improve the conditions of detained juveniles.

90. The Special Rapporteur recommends that States which have already ratified the Convention on the Rights of the Child verify that the provisions of the Convention are being applied, in particular articles 1, 37 and 40. Moreover, States should consider the full application of the United Nations rules, guidelines and conventions concerning juvenile justice.

91. In this connection, the Special Rapporteur recommends the prompt implementation of paragraph 11 of General Assembly resolution 45/113 which urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to

take all the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

92. The Special Rapporteur recommends that the same should apply for the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) as well. The Special Rapporteur believes that her next report should be devoted to evaluating the application of the provisions of the above-mentioned instruments. The Secretary-General should provide the Special Rapporteur with the necessary assistance for the preparation of such a report, to be presented to the Sub-Commission at its forty-fifth session.

93. In accordance with rules 81 to 87 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Special Rapporteur would like to emphasize that juvenile justice should be managed by specially trained personnel such as police officers, judges, juvenile wardens, teachers and other qualified personnel.

94. In accordance with articles 16 and 17 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and, in the light of rule 4 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Special Rapporteur recommends that special care be devoted to children of migrant families.

95. Special care should also be devoted to juveniles who are suffering from mental illness, as stated in paragraph 53 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In this connection, a determination concerning the classification and placement of each juvenile should be made as soon as possible after admission to a detention facility, in accordance with articles 27 to 30 of the above-mentioned Rules.

96. Although the perception of the concept of maturity and responsibility of the individual can influence the provisions concerning the absolute minimum age of criminal liability, countries should align their juvenile codes to the provisions set up in The Beijing Rules and in the Convention on the Rights of the Child. Alternative measures, such as the release of juveniles into the custody of family or guardians, should be implemented in lieu of pre-trial detention. The Special Rapporteur recommends that the provision set forward in article 13.1 of The Beijing Rules and article 37 (b) of the Convention on the Rights of the Child be fully applied. No delay should be allowed in considering the release of juveniles.

97. The Special Rapporteur considers the possibility of serving the sentence in non-institutional premises and the employment of convicted juveniles in social work and in other alternative occupations, to be of the utmost importance. The Special Rapporteur notes with satisfaction that several countries apply provisions concerning non-custodial measures. Deprivation of liberty should always be a measure of last resort, limited to the most serious cases, and for a minimum length of time. Although the counter-productive effect of custodial measures has been widely demonstrated, such measures are still used too frequently. Deprivation of liberty can be particularly detrimental to the process of rehabilitation of juveniles.

98. All the Governments which have replied stated that detention in institutions implies the participation of juvenile offenders in educational programmes and vocational training. The Special Rapporteur recommends that all countries bear in mind that rehabilitation is the essential aim of institutional and non-institutional treatment; in reducing the number of criminals and the gravity of offences, the importance of rehabilitation programmes is fundamental.

99. One of the major concerns of the pertinent international standard is to guarantee the separation of adults and juveniles in penal institutions. The separation should be guaranteed during periods of custody and pre-trial detention and after conviction. The Special Rapporteur regrets to note that this fundamental right is not yet fully recognized and that several countries do not grant sufficient financial resources for the construction of facilities able to guarantee the separation of adults and juveniles.